IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CASE NO.: **CRL.R.No.106 of 1994**
DATE OF DECISION: 18.10.2007

HET RAM ....PETITIONER

VERSUS

STATE OF HARYANA ...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARBANS LAL.

PRESENT: Mr. Hari Om Sharma, Advocate for the petitioner.

Mr. Anil Kumar Rathee, Addl. A.G., Haryana.

HARBANS LAL, J.

This revision petition has been directed against the judgment dated 23.12.1992 and order of sentence dated 24.12.1992 rendered by the Court of Shri Jagdev Singh, Judicial Magistrate Ist Class, Narwana, whereby he convicted and sentenced the revision-petitioner to undergo six months rigorous imprisonment and to pay a fine of Rs.200/- or in default thereof to further undergo rigorous imprisonment for one month under Section 304-A of the Indian Penal Code as well as the judgment dated 14.12.1993 rendered by the Court of Addl. Sessions Judge, Jind, vide which, he dismissed the appeal.

Shortly put, facts of the prosecution case are that on 26.10.1986 Bhale Ram PW-1 accompanied by one Pala (deceased) was travelling on a scooter bearing Registration No.CHR-3066 being driven by him (Bhale Ram). Pala was riding the pillion and they were heading towards village Sacha Khera from village Damoda. When they reached the area of village Danoda Kalan at about 11.00 A.M., a camel cart loaded with fooder was heading towards Narwana and as he was over-taking the bullock cart, meanwhile a bus of Haryana Roadways bearing Registration No.HRX-1625 being driven by the revision-petitioner in a rash and negligent manner and without blowing any horn came and hit the scooter from behind and as a result of its impact, he fell down on the ground and Pala was run over by the bus and died at the spot. The

revision-petitioner escaped leaving the bus behind. The FIR was registered on the basis of complaint Ex.PA. After completion of investigation, the revision petitioner was challaned.

In order to substantiate its allegations, the prosecution examined as many as 6 witnesses. The prosecution evidence was shut out by order of the Court due to non-production of the remaining evidence. The revision-petitioner was examined under Section 313 of the Code of Criminal Procedure, who denied the same and did not choose to lead any defence evidence.

After hearing the learned APP as well learned defence counsel, the revision-petitioner was convicted and sentenced by the learned trial Court as noticed at the outset. Feeling dissatisfied with the judgment dated 23.12.1992, the revision-petitioner preferred an appeal, which was also dismissed by the Court of learned Addl. Sessions Judge, Jind as noticed earlier.

I have heard the learned counsel for the parties.

Arguendo, the learned counsel for the petitioner having realised that the evidence adduced by the prosecution sufficiently substantiate the charge against the petitioner and the same has been accepted and relied upon by the courts below, so it will be very difficult to persuade this Court to take a contrary view, made a submission for release of the petitioner on probation of good conduct by placing abundant reliance upon the judgments made in the *Ram Pal* Vs. *State of Punjab*, 2006(1) Recent Crimianl Reports (Criminal) 784, *Santokh Singh* Vs. *State of Punjab*, 2006(1) Recent Criminal Reports (Criminal) 834, *Chuni Lal* Vs. *State of Haryana*, 2006(1) Recent Criminal Reports (Criminal) 844, *Roshan Lal* Vs. *State of Punjab*, 2006(1) Recent Criminal Reports (Criminal) 795.

Mr. Rathee, Addl. AG, Haryana has opposed this prayer. I have given a deep and thoughtful consideration to the submission made on behalf of the revision-petitioner. As transpires from the record, the accident took place

way-back in 1986. Needless to say, the revision-petitioner has been facing the agony of trial for the past more than 20 years. As already observed, the sentence inflicted upon the revisionist is six months rigorous imprisonment and fine Rs.200/-. The accused-revisionist is a first convict. He was admitted to bail by this Court on 21.3.1994. Obviously, he is on bail for the past more than 13 years. In re: Chuni Lal (Supra) this Court was pleased to observe that the accused may be released on probation in a case under Sections 279, 304-A, 337 IPC on the following grounds:

> *(i) Having remained on bail for a sufficiently long period,*
> *(ii) Accused not a previous convict and did not indulge in any criminal activity during the post conviction period,*
> *(iii) Faced agony of trial for a considerable long period, and*
> *(iv) being the sole bread earner.*

In re: Roshan Lal (Supra), which was also the case under Section 304-A of IPC, the occurrence was 17 years old and the accused was released on probation by this Court. Further in re: Santokh Singh, which was also a case under Section 304-A of IPC, the incident was 17 years old and the accused remained in custody for 15 days. He was also ordered to be released on probation by this Court. In re: Ram Pal (Supra), which was also a case under Section 304-A of IPC, the incident was 16 years of old and the accused had remained on bail for more than 13 years and was a first convict. He was also ordered to be released on probation by this Court.

Harking back to the facts of the current case, there is nothing on the record to show that the accused-petitioner ever misused the concession of bail. As is borne out from the record, he remained in custody for a period exceeding 20 days.

The conviction has not been challenged. As submitted by the learned counsel for the petitioner, if the petitioner, who is the sole bread winner of his family is sent to the prison to undergo actual sentence of imprisonment, it

will ruin his entire family. The heirs of the deceased Pala can still be compensated.

Under the above-mentioned circumstances and by placing abudant reliance upon the observations made in the authorities sought to be relied upon by the learned counsel for the petitioner, I deem it a fit case, where benefit of probation should be given. It is directed that the petitioner shall be released on probation for a period of two years under Section 4(1) of Probation of Offenders Act on his furnishing personal bond in the sum of Rs.25000/- with one surety in the like amount to the satisfaction of the trial Court. The bonds shall be furnished within three months from today. During his probation period, he will keep the peace and be of good behaviour. However, he will come and receive sentence as and when required by the Court. He shall deposit Rs.15000/- as compensation to be paid to the heirs of deceased Pala.

With the above modification, this petition stands dismissed.

October 18, 2007 **(HARBANS LAL)**
Vimal **JUDGE**